

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL P. MITCHELL,

Defendant.

No. CR 05-50-LRR

FINAL JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NUMBER _____

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NUMBER _____

Neither in these instructions nor in any ruling, action, or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

INSTRUCTION NUMBER _____

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

INSTRUCTION NUMBER _____

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions, and comments by the lawyers are not evidence.
2. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
4. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations. These documents include the following:

- (1) defendant’s exhibit YY, Mr. Abou-Assaly’s notes made on June 8, 1999;
- (2) defendant’s exhibit ZZ, Mr. Abou-Assaly’s notes made October 13, 1998 regarding a conversation with the defendant;

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

- (3) defendant's exhibit AAA, a portion of Mr. Abou-Assaly's billing record of June 1998;
- (4) government's exhibit 12, Mr. Abou-Assaly's notes dated May 6, 1999 and December 9, 1999; and,
- (5) court exhibits 1, 2, and 3, the transcripts of the March 4, 2003 bankruptcy hearing.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NUMBER _____

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NUMBER _____

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NUMBER ____

In the previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached.”

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.

INSTRUCTION NUMBER ____

In this case the defendant did not testify. The fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NUMBER ____

You have heard testimony that the defendant made out-of-court statements to Janet Reasoner and Michael Kitsmiller in this case. It is for you to decide: (1) whether the defendant made the statements and (2) if so, how much weight you should give to them.

In making these two decisions you should consider all of the evidence, including the circumstances under which the statements may have been made.

INSTRUCTION NUMBER ____

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdicts, in the same condition as it was received by you.

INSTRUCTION NUMBER _____

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NUMBER _____

You heard recordings of a bankruptcy proceeding. This proceeding was legally recorded, and you may consider the recordings just like any other evidence.

As you have also heard, there is a typewritten transcript of the recording I have just mentioned. That transcript also undertakes to identify the speakers engaged in the conversation.

You were permitted to have the transcript for the limited purpose of helping you follow the proceeding as you listened to the recording, and also to help you keep track of the speakers. The transcript, however, is not evidence. The recording itself is the primary evidence of its own contents.

Differences in meaning between what you hear in the recording and read in the transcript may be caused by such things as the inflection in a speaker's voice. You should, therefore, rely on what you hear rather than what you read when there is a difference.

INSTRUCTION NUMBER ____

The Indictment in this case charges the defendant with two different offenses.

Under Count 1, the Indictment charges that the defendant committed the crime of fraudulent concealment of assets in a bankruptcy proceeding.

Under Count 2, the Indictment charges that the defendant committed the crime of false declaration in a bankruptcy proceeding petition.

The defendant has pleaded not guilty to each of those charges.

As I told you at the beginning of trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crime charged.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

There is no burden upon the defendant to prove that he is innocent.

INSTRUCTION NUMBER ____

The crime of fraudulent concealment of assets in a bankruptcy proceeding, as charged in Count 1, has four essential elements, which are:

- One,* between about July 12, 2000, and continuing to about October 12, 2000, a bankruptcy case was pending in the United States Bankruptcy Court for the Northern District of Iowa, in which the defendant was the Debtor;

- Two,* the defendant's total income from January 1, 1999, through about July 11, 2000, and / or the defendant's ownership interest in Wood Floors Imports were part of the defendant's bankruptcy estate;

- Three,* the defendant knowingly concealed or caused to be concealed either his total income from January 1, 1999, through about July 11, 2000 or his ownership interest in Wood Floors Imports or both from the trustee charged with the custody and control of that property, his creditors, or the United States Trustee; and,

- Four,* such concealment was done with the intent to defraud.

The term "debtor" means the person or corporation for whom a bankruptcy case has been commenced.

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

When a debtor files a petition seeking protection from creditors under the bankruptcy laws, a “bankruptcy estate” is created, which is comprised of all property belonging to the debtor, wherever located, and by whomever held, as of the time of the filing of the bankruptcy case. The "bankruptcy estate" also includes proceeds, products, rents, or profits of or from the property of the estate, but it does not include earnings from services performed by an individual after the case is filed.

“Concealment” means not only hiding property or assets, it also includes preventing the discovery of assets, transferring property or withholding information required to be made known. Concealment of property of the estate may include transferring property to a third party or entity, destroying the property, withholding knowledge concerning the existence or whereabouts of the property, or knowingly doing anything else by which the defendant acts to hinder, unreasonably delay or defraud any creditors. The United States need not prove that the concealment was successful.

To act with “intent to defraud” means to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss or bringing about a financial gain to oneself or another, to the detriment of a third party.

If you unanimously find the government has proven all of these essential elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 1; otherwise you must find the defendant not guilty of the crime charged under Count 1.

INSTRUCTION NUMBER _____

Count 1 of the Indictment, charging the defendant with knowing and fraudulent concealment of property belonging to his bankruptcy estate alleges that two specific things that were knowingly and fraudulently concealed or caused to be concealed by the defendant: (1) defendant's ownership interest in Wood Floors Imports; and, (2) defendant's total income from January 1, 1999, through about July 11, 2000.

The government is not required to prove that *both* of the things alleged in Count 1 of the Indictment were concealed.

Each juror must agree with each of the other jurors, however, that the same thing alleged in Count 1 as being knowingly and fraudulently concealed, or caused to be concealed, by the defendant was, in fact, concealed. In order to convict, the jury must unanimously agree upon at least one of the things alleged to have been knowingly and fraudulently concealed by the defendant.

INSTRUCTION NUMBER ____

The crime of making a false declaration in a bankruptcy petition, as charged in Count 2, has four essential elements, which are:

- One,* between about July 12, 2000, and continuing through to about October 12, 2000, a bankruptcy case was pending in the United States Bankruptcy Court for the Northern District of Iowa, in which the defendant was the Debtor;
- Two,* the defendant made one or more false declarations, certificates, verifications and statements regarding a matter, in relation to the bankruptcy proceeding;
- Three,* the defendant knew the declaration, certificate, verification and statement was false when it was made;
- Four,* the defendant did so with the intent to defraud.

The term “debtor” means the person or corporation for whom a bankruptcy case has been commenced.

To act with “intent to defraud” means to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss to another or bringing about a financial gain to oneself or another, to the detriment of a third party.

If you unanimously find the government has proven all of these essential elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 2; otherwise you must find the defendant not guilty of the crime charged under Count 2.

INSTRUCTION NUMBER _____

Count 2 of the Indictment, charging the defendant with knowingly and fraudulently submitting a false declaration, certificate, verification and statement under penalty of perjury, alleges that the defendant made one or more false or fraudulent representations regarding: (1) defendant's ownership interest in Wood Floors Imports; (2) Defendant's total income from January 1, 1999, through about July 11, 2000; and, (3) debt payments made on behalf of the defendant by Wood Floors Imports on an unsecured F&M loan.

The government is not required to prove that all of the representations that are alleged in Count 2 of the Indictment as false are, in fact, false.

Each juror must agree with each of the other jurors, however, that the same representation alleged in Count 2 to be false or fraudulent is, in fact, false or fraudulent. The jury need not unanimously agree on each such representation alleged, but, in order to convict, must unanimously agree upon at least one such statement as false or fraudulent when knowingly made or used by defendant.

INSTRUCTION NUMBER _____

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have said, it is entirely up to you to decide what facts to find from the evidence.

INSTRUCTION NUMBER _____

An act is done “knowingly” if the defendant realized what he was doing and did not act through ignorance, mistake or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider the evidence of the defendant’s acts and words, along with all other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NUMBER _____

One of the issues in this case is whether defendant acted in good faith. Good faith is a complete defense to the charges of fraudulent concealment of assets and fraudulent submission of false declarations, certificate, verification and statement if it is inconsistent with intent to defraud which is an essential element of the charges.

One who expresses an opinion honestly held by him, or a belief honestly entertained by him, is not chargeable with fraudulent intent even though his opinion is erroneous or his belief is mistaken; and, similarly, evidence which establishes only that a person made a mistake in judgment or an error in management, or was careless, does not establish fraudulent intent.

Evidence that defendant acted in good faith may be considered by you, together with all the other evidence, in determining whether or not he acted with the intent to defraud.

INSTRUCTION NUMBER _____

You will note the Indictment charges that the offenses were committed “between” or “on about” certain dates. The government need not prove with certainty the exact date or the exact time period of an offense charged. It is sufficient if the evidence established that an offense occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NUMBER _____

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes, and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NUMBER _____

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Finally, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. Each verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts should be—that is entirely for you to decide.

INSTRUCTION NUMBER _____

Attached to these instructions you will find two Verdict Forms. The Verdict Forms are simply the written notices of the decisions that you reach in this case. The answer to each Verdict Form must be the unanimous decision of the jury.

You will take these Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed on an answer to each Verdict Form, your foreperson will fill out each Form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdicts as accord with the evidence and these instructions.

DATE

**LINDA R. READE
JUDGE, U. S. DISTRICT COURT**

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL P. MITCHELL,

Defendant.

No. CR 05-50-LRR

VERDICT FORM - COUNT 1

We, the Jury, make the following findings on the questions put to us regarding
Count 1 of the Indictment:

Question 1: We, the Jury, unanimously find beyond a reasonable doubt the
defendant, Daniel P. Mitchell, _____ of the crime of fraudulent concealment
of assets, as charged in Count 1 of the Indictment.
Not Guilty/Guilty

Note: If you unanimously find the defendant guilty of the above crime,
have your foreperson write “guilty” in the above blank space, sign and date this
Verdict Form and answer Question 2 in this verdict form.

If you unanimously find the defendant not guilty of the above charge,
have your foreperson write “not guilty” in the above blank space, sign and date
this Verdict Form and proceed to Verdict Form - Count 2.

(CONTINUED)

Question 2: Please place a check mark (✓) before the information that you unanimously find beyond a reasonable doubt that the Defendant concealed (please check all that apply):

_____ Defendant's ownership in Wood Floors Imports

_____ Defendant's total income from January 1, 1999, through about July 11, 2000

FOREPERSON

DATE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL P. MITCHELL,

Defendant.

No. CR 05-50-LRR

VERDICT FORM - COUNT 2

We, the Jury, make the following findings on the questions put to us regarding Count 2 of the Indictment:

Question 1: We, the Jury, unanimously find beyond a reasonable doubt the defendant, Daniel P. Mitchell, _____ of the crime of knowingly and fraudulently submitting false declaration, certificate, verification and statement under penalty of perjury in or in relation to a bankruptcy proceeding, as charged in Count 2 of the Indictment.

Not Guilty/Guilty

Note: If you unanimously find the defendant guilty of the above crime, have your foreperson write "guilty" in the above blank space, sign and date this Verdict Form and answer Questions 2, 3 and 4 in this Verdict Form for Count 2.

If you unanimously find the defendant not guilty of the above charge, have your foreperson write "not guilty" in the above blank space, and sign and date this Verdict Form.

(CONTINUED)

Question 2: Please place a check mark (✓) before the false representation(s) that you unanimously find beyond a reasonable doubt that the Defendant made (please check all that apply):

_____ Defendant's ownership interest in Wood Floors Imports

_____ Defendant's total income from January 1, 1999, through about July 11, 2000

_____ Debt payments made on behalf of Defendant by Wood Floors Imports on an unsecured F&M loan

Question 3: Do you unanimously find beyond a reasonable doubt that one or more of the false declarations, certificate, verification and statement under penalty of perjury were "material" matters, that is, had a natural tendency to influence, or were capable of influencing, the outcome of the bankruptcy proceeding?

_____ Yes

_____ No

If your answer to Question 3 is "Yes" please answer Question 4.

(CONTINUED)

Question 4: Please place a check mark (✓) before one or more of the false declarations, certificate, verification and statement that you unanimously find beyond a reasonable doubt that were material to the outcome of the bankruptcy proceeding (please check all that apply):

_____ Defendant's ownership interest in Wood Floors Imports

_____ Defendant's total income from January 1, 1999, through about July 11, 2000

_____ Debt payments made on behalf of Defendant by Wood Floors Imports on an unsecured F&M loan

FOREPERSON

DATE